

9-59.000 ECONOMIC ESPIONAGE

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Economic Espionage Act of 1996 (18 U.S.C. §§ 1831-1837) --Prosecutive Policy

The United States may not file a charge under the Economic Espionage Act (hereinafter the "EEA"), or use a violation of the EEA as a predicate offense under any other law, without the approval of the Attorney General, the Deputy Attorney General, or the Assistant Attorney General (or the Acting official in each of these positions if a position is filled by an acting official). Violations of such regulations will be appropriately sanctionable and reported by the Attorney General to the Senate and House Judiciary Committees. (*See* October 1, 1996 letter from Attorney General Janet Reno to Chairman Orrin Hatch, Criminal Resource Manual at 1123). Responsibility for reviewing requests for approval of charges to be brought under the EEA rests with the Computer Crime and Intellectual Property Section which will consult with the Internal Security Section in cases under 18 U.S.C. § 1831.

The EEA is not intended to criminalize every theft of trade secrets for which civil remedies may exist under state law. It was passed in recognition of the increasing importance of the value of intellectual property in general, and trade secrets in particular to the economic well-being and security of the United States and to close a federal enforcement gap in this important area of law. Appropriate discretionary factors to be considered in deciding whether to initiate a prosecution under § 1831 or § 1832 include: (a) the scope of the criminal activity, including evidence of involvement by a foreign government, foreign agent or foreign instrumentality; (b) the degree of economic injury to the trade secret owner; (c) the type of trade secret misappropriated; (d) the effectiveness of available civil remedies; and (e) the potential deterrent value of the prosecution. The availability of a civil remedy should not be the only factor considered in evaluating the merits of a referral because the victim of a trade secret theft almost always has recourse to a civil action. The universal application of this factor would thus defeat the Congressional intent in passing the EEA. A more detailed discussion of the prosecutions of theft of trade secrets is contained in the Computer Crime and Intellectual Property Section's manual entitled *Federal Prosecution of Violations of Intellectual Property Rights, (Copyrights, Trademarks and Trade Secrets)*.

See the Criminal Resource Manual for a more detailed discussion of the Economic Espionage Act of 1996

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| Introduction to the Economic Espionage Act | Criminal Resource Manual at 1122 |
| Letter from Attorney General to Senator Hatch Regarding Prior Approval Requirement for Economic Espionage Prosecutions | Criminal Resource Manual at 1123 |
| Elements of the Offense Under 18 U.S.C. § 1831 | Criminal Resource Manual at 1124 |
| 18 U.S.C. § 1831 Element One: The Defendant Stole or, Without Authorization of the Owner, Obtained, Destroyed, or Conveyed Information | Criminal Resource Manual at 1125 |

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| 18 U.S.C. § 1831 Element Two: The Defendant Knew the Information Was Proprietary | Criminal Resource Manual at 1126 |
| 18 U.S.C. § 1831 Element Three: The Information Was a Trade Secret | Criminal Resource Manual at 1127 |
| 18 U.S.C. § 1831 Element Four: The Defendant Acted With the Intent to Benefit a Foreign Government, Foreign Instrumentality, or Foreign Agent | Criminal Resource Manual at 1228 |
| Elements of the Offense Under 18 U.S.C. § 1832 | Criminal Resource Manual at 1129 |
| 18 U.S.C. § 1832 Element One: The Defendant Stole, or Without Authorization of the Owner, Obtained, Destroyed, or Conveyed Information | Criminal Resource Manual at 1130 |
| 18 U.S.C. § 1832 Element Two: The Defendant Knew the Information Was Proprietary | Criminal Resource Manual at 1131 |
| 18 U.S.C. § 1832 Element Three: The Information Was a Trade Secret | Criminal Resource Manual at 1132 |
| 18 U.S.C. § 1832 Element Four: The Defendant Acted With the Intent to Economically Benefit a Third Party | Criminal Resource Manual at 1133 |
| 18 U.S.C. § 1832 Element Five: Intent to injure the owner of the trade secret | Criminal Resource Manual at 1134 |
| 18 U.S.C. § 1832 Element Six: Interstate or Foreign Commerce | Criminal Resource Manual at 1135 |
| Defenses | Criminal Resource Manual at 1136 |
| Criminal Forfeiture | Criminal Resource Manual at 1137 |
| Civil Proceedings | Criminal Resource Manual at 1138 |
| Confidentiality | Criminal Resource Manual at 1139 |
| Extraterritoriality | Criminal Resource Manual at 1140 |

9-59.110 Economic Espionage Act -- Assignment of Responsibilities

Supervisory responsibility for prosecutions brought under 18 U.S.C. § 1831 rests with the Internal Security Section of the Criminal Division which shall consult with the Computer Crime and Intellectual Property Section. The Computer Crime and Intellectual Property Section has supervisory responsibility for prosecutions brought under 18 U.S.C. § 1832. The Federal Bureau of Investigation has investigative responsibility for complaints arising under both of these sections. Cases involving importation of goods which contain or use the misappropriated trade secret may also be investigated by the United States Customs Service.